



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

OCT 20 2016

Susan Pultz, Branch Chief
Conservation Planning and Rulemaking Branch
Protected Resources Division
National Marine Fisheries Service
Pacific Islands Regional Office
1845 Wasp Blvd., Bldg 176
Honolulu, HI 96818

Subject: Enhancing Protections for Hawaiian Spinner Dolphins to Prevent Disturbance Draft
Environmental Impact Statement and Regulatory Impact Review (CEQ # 20160191)

Dear Ms. Pultz,

The U.S. Environmental Protection Agency has reviewed the Draft Environmental Impact Statement for the above referenced project. Our review and comments are provided pursuant to the National Environmental Policy Act, the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

Under the Proposed Action and other action alternatives described, the National Marine Fisheries Service proposes to adopt regulations to enhance protections for Hawaiian spinner dolphins by reducing the threat of take from human activities that cause harassment or disturbance. These regulations are necessary to address chronic interaction and viewing impacts on Hawaiian spinner dolphins from dolphin-directed activities that are concentrated in coastal waters. Proposed regulatory measures would include approach regulations (for persons and vessels) in marine areas where viewing pressures are most prevalent, including within two nautical miles of the Hawaiian Islands and the waters between the islands of Lanai, Maui, and Kahoolawe.

Resident populations of Hawaiian spinner dolphins generally forage and feed offshore at night and routinely return to areas along the coast to socialize, nurture their young, and rest during the day. Essential daytime habitats have been increasingly targeted by commercial operators and individuals interested in viewing or interacting with Hawaiian spinner dolphins. Compliance with current take prohibitions and adherence to viewing guidelines is poor. Therefore, the NMFS is proposing to adopt regulations that would prohibit swimming with, and approaching within 50 yards of, Hawaiian spinner dolphins within 2 nautical miles from shore of the Hawaiian Islands and within designated waters between Lanai, Maui, and Kahoolawe, where spinner dolphins are present throughout the day.

The EPA supports the goal of enhancing protections for Hawaiian spinner dolphins using approach regulations as described in the DEIS. Without specific regulations, incidents of disturbance are likely to continue and could increase based on recent trends. If appropriately implemented, the proposed regulations have the potential to prevent long-term adverse impacts to spinner dolphin populations by preventing disturbances due to chronic and concentrated viewing practices.

Based on our review of the DEIS, we have rated the proposed Project and the document *as Lack of Objections* (LO). Please see enclosed *Summary of EPA Rating Definitions*. We recommend that the Final EIS describe any other management measures that will be implemented in conjunction with the proposed regulations and include additional information on how the proposed regulations would be implemented and enforced, including potential penalties for violations. The Final EIS should also discuss adaptive management and describe how it will be utilized in conjunction with the preferred alternative.

We appreciate the opportunity to review this DEIS and are available to discuss our comments. When the Final EIS is released for public review, please send one hard copy and one CD-ROM to the address above (Mail Code: ENF-4-2). If you have any questions, please contact me at 415-947-4161, or contact Ann McPherson, the lead reviewer for this project. Ann can be reached at 415-972-3545 or mcpherson.ann@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Connell Dunning". The signature is written in a cursive, flowing style.

Connell Dunning, Acting Manager
Environmental Review Section

Enclosure: Summary of EPA Rating Definitions

SUMMARY OF EPA RATING DEFINITIONS*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

ADEQUACY OF THE IMPACT STATEMENT

"Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

